LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
MAY 14 1965
JOHN F. DAVIS, CLERK

No. 1039

IN THE
SUPREME COURT OF THE UNITED STATES

JEAN COBB KRUM,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

James R. Ramsey
Assistant Attorney General

Attorneys for Respondent

The Capitol
Lansing, Michigan

PRINTED BY SPEAKER-HINES AND THOMAS, LANSING, MICHIGAN

IN THE
SUPREME COURT OF THE UNITED STATES

JEAN COBB KRUM,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

QUESTION PRESENTED

Is the defense of resistance to an illegal arrest or search available where the petitioner was stopped by police officers manning a blockade in an effort to apprehend two escaped criminals, and petitioner, after refusing to move a blanket which might have concealed a fugitive, was directed to park the car on the road shoulder, then petitioner went 75 feet to where officer was standing and, after being told to show his registration certificate and go on his way, interfered with the officer's handling of his loaded firearm?

STATUTES INVOLVED

Also involved is CL 1948 § 257.223 (MSA 1960 Rev Vol § 9.1923) set forth in full in Appendix A.

STATEMENT OF THE CASE

The statement of the case is in the main correct. However, the jury believed the police officers and it would seem appropriate to add to the statement the following. The officers made no attempt to search the Krum car until after the occurrences out of which the present case was brought were history. Trooper Sheppard said:

> "I told him • • • unless I had a search warrant I couldn't look under the bedroll." (60a)

Officer Hurley said:

> "Mr. Krum was talking to me, and I asked him to take it easy and show it [the registration certificate] to us and he could be on his way. But, at that time I was satisfied in my own mind—I don't know what took place before—but, what was taking place outside and in back, when Krum came over by me, he wasn't bothering me too much then, as far as in my own mind Mr. Krum didn't fit the description, that I thought he would be one of the criminals at that time, so I started back to check. Mr. Krum came up to me, and I said, 'Now, stand back just a second, I want to check this car,' and I had this here thirty carbine loaded with a thirty round clip in it. I always keep one in the chamber ready to go. So then, he wanted to know who I was and what my badge number was, and he started to move around in front of me and I told him to step back, that you are sort of bothering me here, and it is a dangerous thing here in front with this gun. Of course, the gun, the way I was standing, it was always pointed towards the car that was coming up, and with a shell in the chamber, things could happen.
>
> • • •

"You say he brushed up against you. Can you tell us what you mean by that?

"Well, he brushed up toward my arm and gun, which interfered with the moving of the gun over—he moved the gun over, which interfered with me trying to perform my duty, and at the same time when you start to hold a gun, you hold it with both hands, because you have to control the gun.

"Was there a touching?

"There was a touching between him and I; yes. And, I told him to step back; if he would just show us his registration he could be on his way, because we had a more important job to do here; we got two criminals out and we weren't out there to fool around. So, his remark was, 'I don't have to and you can't make me,' and I told him again, I said, 'I am telling you once more now to get out of my way, because you are interfering with me performing my duties; I am looking for the criminals in the cars and notifying the people for their safety,' and so forth.

"What did he do then?

"The same remark again, 'I don't have to and you can't make me'. So, that is when he came in contact with the gun, he brushed up against me because he wanted my badge number. So, I told him, 'You are under arrest; you will have to go to the patrol car.' And he remarked again, 'I don't have to and you can't make me.' So, I put the gun in one hand and I took him by the wrist and he wouldn't move, so I did have to pull him with enough force to pull him over to the car." (104a-106a)

A man weighing 130 pounds could have been hiding under the blanket. (90a, 132a)

ARGUMENT

THE DEFENSE OF RESISTANCE TO AN ILLEGAL ARREST OR SEARCH IS NOT AVAILABLE WHERE THE PETITIONER WAS STOPPED BY POLICE OFFICERS MANNING A BLOCKADE IN AN EFFORT TO APPREHEND TWO ESCAPED CRIMINALS, AFTER REFUSAL TO MOVE A BLANKET, WAS DIRECTED TO PARK THE CAR ON THE ROAD SHOULDER, PETITIONER WENT 75 FEET TO WHERE OFFICER WAS STANDING AND, AFTER BEING TOLD TO SHOW HIS REGISTRATION CERTIFICATE AND GO ON HIS WAY, INTERFERED WITH THE OFFICER'S HANDLING OF HIS LOADED FIREARM.

I.

The stopping of petitioner's car at the Mackinac Straits was not an illegal arrest. In so stating, we are not unaware of *People v. Gonzales*, 356 Mich. 247.

> "Sheriffs and other law enforcement officers possess authority to set up roadblocks in a reasonable manner for the apprehension of fleeing violators. Such authority is inherent in the power and the duties of law enforcement officers if those duties are to be effectively discharged." *Kegal v. Brugger*, 19 Wis 2d 1, 119 NW 2d 394, 396.

Justice Smith's concurring opinion in *People v. Gonzales*,

supra, termed a car search in the vicinity of a prison break as more an act of mercy than oppression.

In *State v. Hatfield,* 112 W. Va. 424, 164 SE 518, a case involving a roadblock the Court stated:

> "The duty to suppress crime and to arrest violators of the law, necessarily carries with it the right to stop persons for the purpose of identification. And this logically extends to those traveling on the highways in motor and other vehicles. It has always been the custom for cordons to be thrown out in the vicinity of a crime, or where an offender is supposed to be in hiding, and to stop all persons for purpose of identification, in order that felons may be apprehended. This is a necessary and reasonable restraint for protection of our personal liberty. 'The right of personal liberty consists in the power of locomotion, of changing situation, of moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due process of law.' Voorhees, Law of Arrests, p. 1, citing 1 Bl. Com. 135; *Butchers' Union, etc. Co. v. Crescent City, etc. Co.,* 111 U.S. 746, 28 L. Ed. 585; *In Matter of Jacobs,* 98 N.Y. 98. The same author also states at page 7 that 'The assurance of personal liberty does not license any person to be free from restraint; on the contrary, it demands such necessary restraint of persons as will insure the utmost amount of personal liberty to each, for the safety and well-being of society are paramount to individual liberty.' Since the advent of the motor age, the legislature, which has primarily the power, subject to constitutional restrictions, to control and regulate the use of public highways, has invoked a system of registration for all motor vehicles for the benefit and protection of the public. In addition to license plates, Code

1931, 17-6-2, provides for a registration certificate which shall at all times be carried in each vehicle, 'subject to examination upon demand by any proper officer.' And under section 27, article 8, of the same chapter, authority is given to all members of the department of public safety to render necessary assistance to the road commission in seeing that the highways are properly policed and that only those duly authorized operate vehicles thereon. This protects automobile owners in their property, and against unauthorized drivers. If a party, upon inquiry, can show proper credentials he may proceed; if not, he may be taken into custody or directed to appear before a proper officer for hearing. The public is thus accorded additional security. A law abiding citizen cannot have a valid objection to the inconvenience of being stopped, so long as he is accorded courteous treatment. The officers, under the existing circumstances, were warranted in stopping Osborne's automobile for purposes of identification; otherwise, the enforcement of law and order would be greatly hampered."

"Whether an officer has a right to stop an automobile and interrogate the occupants is a question distinct from whether he has a right to stop a vehicle, make an arrest, and conduct a search. Much less information is required to justify the actions of an officer in engaging in such interrogation than is necessary to warrant arrest and search." *People v. McLaine,* 204 Cal. App. 2d. 693, 22 Cal. Rpts. 72, 75.

Applying the foregoing principles to the instant case, it is clear that petitioner was not denied his constitutional rights.

II.

Petitioner contends that he had a right to resist the allegedly unlawful search. However, it is clear that no search of the Krum automobile was contemplated at the time of the fracas which petitioner claimed to be in defense of his constitutional rights. Trooper Sheppard said that he could not search the car without a search warrant. (60a) Since this is the only statement relative to any intended search, it is quite obvious that the officers did not intend to search the car prior to the obtaining of a search warrant. This in spite of the fact that a man the size of one of the escaped prisoners could have hidden beneath the blanket.

III.

In any event the acts of which petitioner conceivably could complain and defend against occurred prior to and at a place remote from the occurrences forming the basis for the charge.

The occupants were first approached by Trooper Sheppard. He was told that the bedroll in the back of the car would not be moved without a search warrant. Since more cars were approaching the blockade point, the driver of the Krum car was told to pull the car over to the side of the road. (60a) Trooper Sheppard walked to the back of the car and petitioner came out of the car to talk to him. Petitioner stated that they were coming back from a fishing trip and that there were no escapees in the car and there was no use to look into it. This made Trooper Sheppard suspicious and he asked petitioner for his driver's license and registration certificate, which request was refused. Trooper Sheppard then called for Trooper Hurley at the

blockade point which was approximately 75 feet away. (61a) Cars were approaching the blockade point so Trooper Hurley asked that Trooper Sheppard and Petitioner come to where he was. Trooper Hurley did, however, walk out and meet petitioner about 10 feet from where he was standing and Trooper Sheppard went back to petitioner's car. Trooper Hurley asked Petitioner for his driver's license and registration which request was refused. Trooper Hurley then walked back to the blockade point to check approaching cars, and petitioner followed him. (103a, 104a) It is from the encounter which followed that the charge arose on which petitioner was convicted. Trooper Hurley testified as follows:

> "• • • Mr. Krum came up to me, and I said, 'Now stand back just a second, I want to check this car,' and I had this here thirty carbine loaded with a thirty round clip in it. I always keep one in the chamber ready to go. So then, he wanted to know who I was and what my badge number was, and he started to move around in front of me and I told him to step back, that you are sort of bothering me here, and it is a dangerous thing here in front with this gun. Of course, the gun, the way I was standing, it was always pointed towards the car that was coming up, and with a shell in the chamber, things could happen.
>
> "• • •
>
> "You say he brushed up against you. Can you tell us what you mean by that?
>
> "Well, he brushed up toward my arm and gun, which interfered with the moving of the gun over—he moved the gun over which interfered with me trying to per-

form my duty, and at the same time when you start to hold a gun, you hold it with both hands, because you have to control the gun.

"Was there a touching?

"There was a touching between him and I; yes. And, I told him to step back; if he would just show us his registration he could be on his way, because we had a more important job to do here; we got two criminals out and we weren't out there to fool around. So, his remark was, 'I don't have to and you can't make me,' and I told him again, I said, 'I am telling you once more now to get out of my way, because you are interfering with me performing my duties; I am looking for the criminals in the cars and notifying the people for their safety,' and so forth.

"What did he do then?

"The same remark again. 'I don't have to and you can't make me.' So, that is when he came in contact with the gun, he brushed up against me because he wanted my badge number. So, I told him, 'You are under arrest; you will have to go to the patrol car.' And he remarked again, 'I don't have to and you can't make me.' So I put the gun in one hand and I took him by the wrist and he wouldn't move, so I did have to pull him with enough force to pull him over to the car." (104a-106a)

Surely Petitioner may not seriously contend that he was resisting an illegal arrest or unlawful search by following Trooper Hurley and persisting in his efforts to obtain the Trooper's badge number. It is obvious from the foregoing

testimony of Trooper Hurley that nothing occurred between him and the Petitioner which justified Petitioner to interfere with Trooper Hurley in the conduct of his lawful business. The only demand made on Petitioner by the Trooper was that he produce his registration certificate as required by CL 1948 § 257.223, MSA 1960 Rev Vol § 9.1923.

In regard to Petitioner's refusal to produce his registration certificate, it is respectfully submitted that this refusal alone was sufficient to support Petitioner's conviction for obstructing and opposing a police officer of the State of Michigan. In *People v. Fidler*, 280 N.Y. App. Div. 698, 117 N.Y. 2d 313, 318, a state statute required State Police to inspect motor vehicles, the purpose being to detect inadequacy of equipment, overloading and other violations of the law. The police observed five vehicles upon the highway driven by the defendants which appeared to be overloaded. The police stopped the trucks and ordered them on the portable scales. The drivers refused, took their keys out of the ignition switch, locked some of the cab doors and refused to give the keys to the police officers. The Court held:

> "But the refusal to drive the trucks on the scales, together with the shutting off of the motors; the removal and retention of the ignition keys and the locking of some of the cab doors, in their totality presented a factual pattern of events upon which a jury might be warranted in finding resistance and obstruction of the duty the police were attempting to perform."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

James R. Ramsey
Assistant Attorney General

Attorneys for Respondent

The Capitol
Lansing, Michigan

APPENDIX A

Every owner upon receipt of a registration certificate shall write his signature thereon with pen and ink in the space provided. Every such registration certificate shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand of a police officer. MSA 1960 Rev Vol § 9.1923; CL 1948 § 257.223.